Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)
Applications of Sprint Nextel Corporation, Transferor) IB Docket No. 12-343
SoftBank Corp., and Starburst II, Inc., Transferees)))
Joint Applications for Consent to Transfer of)
Control of Licenses, Leases, and)
Authorizations; and Petition for Declaratory)
Ruling under Section 310(b)(4) of the)
Communications Act of 1934, as amended)

To: Secretary, Federal Communications Commission

OPPOSITION TO PETITION TO DENY

The Source for Learning, Inc. ("SFL"), by counsel, submits this opposition to the "Petition to Deny" ("Petition") filed by The Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania ("Petitioners") against the above-referenced "Joint Applications" filed by Softbank Corp., Starburst II, Inc. and Sprint Nextel Corporation. While the Petitioners claim to represent a "cross section" of Educational Broadband Service ("EBS") licensees and seek to have the Joint Applications dismissed or sharply conditioned, these Petitioners do not speak for SFL and the Petition repeatedly contradicts SFL's views. SFL holds EBS licenses across the United States, some of which are the subject of excess capacity leases with subsidiaries of Clearwire Corporation ("Clearwire"). SFL has found Clearwire to be a good partner in

(filed February 12, 2013) ("CTN/NEBSA Opposition") at 1-2.

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¹ SFL agrees with other commenters that Petitioners do not represent the EBS community, which comprises approximately 1,300 EBS licensees and 2,200 EBS stations nationwide. *See* "Opposition to Petition to Deny" of the Catholic Television Network and the National EBS Association in IB Docket No. 12-343

advancing SFL's educational mission, and to the extent that Petitioners seek FCC action to invalidate these leases or to require Clearwire to divest its lease rights with SFL, the Commission must deny the Petition.

Discussion

SFL, a non-profit educational organization formerly known as Network for Instructional TV, Inc., was founded more than a quarter century ago to promote the effective use of instructional video, especially in underserved schools. ² SFL's mission has expanded as technology has advanced from video to the Internet. SFL distributes streaming video and uses the newest broadband technologies to provide K-12 and early learning educational resources and services. Specifically, SFL provides web-based learning resources to assist educators, early childhood professionals and families, and is an award-winning leader in the use of technology to deliver instructional materials.

SFL, together with certain locally controlled educational organizations it formed, holds EBS licenses in 22 cities in 13 states and the District of Columbia. Over the years, SFL has leased excess capacity on this EBS spectrum to commercial operators, including Sprint and Clearwire. In cooperation with its commercial lessees, SFL initially provided video services, but has been transitioning to the provision of WiMAX services to educators and students. Royalties from leasing excess capacity from entities such as Clearwire have allowed SFL to create new services and to expand educational resource offerings for use by teachers, families and students.

SFL is providing educational services and is making educational use of its EBS spectrum with the help of Clearwire and other spectrum lessees. Petitioners, which represent two EBS licensees with seven EBS stations in Pennsylvania, do not represent

² SFL changed its name to better reflect its expanded mission and services.

the views of SFL. As described below, the Commission should reject Petitioners' arguments in their entirety.

SFL IS MAKING SUBSTANTIAL EDUCATIONAL USE OF ITS EBS I. **SPECTRUM**

SFL provides services that meet the Commission's educational use requirements. To the extent that the Petitioners include SFL in their claim that "there exists the barest possible educational use of EBS spectrum even in Clearwire's oldest deployed markets,"³ SFL soundly rejects this claim.

In connection with the FCC's November 2011 deadline, SFL filed with the FCC all required "substantial service" showings, thereby demonstrating spectrum use that "is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal." The FCC has accepted all of these substantial service showings and has not canceled or conditioned any SFL license based on the substantial service filings. Nevertheless, Petitioners forge ahead with a dubious claim that includes some SFL licenses within their review of substantial service exhibits for 127 EBS licenses in 20 markets: "96 substantial service exhibits reveal that there is no educational usage." SFL strongly objects to being included in this inaccurate information. In the CTN/NEBSA Opposition, the Catholic Television Network and the National EBS Association ("CTN/NEBSA") quickly dispense with this argument. CTN/NEBSA note that each of the 96 substantial service exhibits were filed pursuant to the Section 27.14(o)(3) geographic coverage safe harbor, whereby substantial service is deemed provided where the lessee provided coverage of at least 30% of the population of the

³ Petition at 9. ⁴ 47 C.F.R. §27.14(o).

licensed area. In addition, CTN/NEBSA state that each filing included a signed certification that the licensee is in compliance with the minimum educational usage requirements of Part 27.6 SFL agrees.

Further, in SFL's case, such substantial service demonstration includes extensive use of its reserved capacity under its leases with Clearwire for educational purposes. SFL provides a suite of educational services, including online services and videos, in EBS licensed areas and elsewhere. The use of this EBS spectrum is vital to advancing SFL's educational mission. Strategic partnerships with spectrum lessees such as Clearwire give SFL additional operational expertise and financial resources toward achieving these educational aims. In fact, in many instances Clearwire has provided wireless coverage and transmission facilities in areas served by EBS lessors even in geographic areas that had no commercial launch of Clearwire services.

Contrary to Petitioners' claims about the EBS industry, SFL's educational use is substantial. Petitioners claim that Clearwire leases afford only "minimal" educational usage and service credits and that "Clearwire's lease of 100% of the EBS channel capacity as used on its system makes it technically impossible and impractical for the licensee to deploy any of its own facilities on the channels." In reality, Petitioners' objection appears to be a collateral attack on the Commission's rules. In several instances, Petitioners speak of "bare minimum compliance" and "minimal educational use" and seeks, *ex post*, to change the educational use requirements in midstream. The Joint Applications are not an appropriate venue, and this is not an appropriate opportunity, for such a challenge. SFL takes strong exception to any suggestion that SFL

⁶ CTN/NEBSA Opposition at 3-4.

⁷ Petition at 11.

⁸ Petition at 9, 12.

is not complying with the EBS service rules when SFL is actually providing substantial service in furtherance of its educational mission.

II. Petitioners' Critiques of EBS Leases Do Not Apply to SFL's EBS Leases with Clearwire

While Petitioners labor to characterize a single EBS lease for a Florida school board as a template for an entire industry, this is simply not the case. SFL has negotiated each of its EBS leases with Clearwire based on SFL's specific needs and SFL's educational mission. SFL has relied on experienced communications counsel in these lease negotiations, and Petitioners do not represent SFL's views about the nature of EBS leases and the relative negotiating power of EBS lessors vs. Clearwire.

To the contrary, Clearwire brings important technical and financial resources that help SFL advance its mission to deliver quality educational services. At all times, SFL has retained control over its EBS spectrum and has remained an active participant with Clearwire in tailoring the EBS spectrum to serve SFL's educational needs. All of SFL's leases make clear that SFL has reserved the required minimum capacity for the spectrum and that Clearwire's rights extend only to the excess capacity that is permissible under the FCC's rules. Moreover, SFL retains responsibility for compliance with Commission rules for the leased EBS spectrum, and no supposed "market power" of Clearwire has prevented SFL from negotiating leases that both sides have determined to be mutually satisfactory.

⁹ Petitioners point to a lease entered into with the School Board of Pinellas County Florida "which upon information and belief, is consistent with dozens if not hundreds) of Clearwire leases of the same or similar form." Petition at 9. This claim, if not almost completely tautological, is unfounded, based on "information and belief" regarding the provisions of Clearwire leases with other EBS entities, including SFL. These contentions are without merit.

¹⁰ Petition at 11.

Conclusion

As set forth herein, The Source for Learning, Inc concurs with the analysis provided in the CTN/NEBSA Opposition and urges the Commission to dismiss or deny the Petition to Deny filed by the Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania against the Joint Applications.

Respectfully submitted,

THE SOURCE FOR LEARNING, INC.

February 12, 2013 By: /s/ Rebecca Rini

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Certificate

I, Jonathan E. Allen, hereby certify that on this 12th day of February, 2013, I caused true and correct copies of the foregoing Opposition to Petition to Deny to be served on the following parties via email (except as indicated):

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